

L. Scott Keehn (SBN 61691)  
 Lisa L. Keehn (SBN 167696)  
**ROBBINS & KEEHN**  
 A Professional Corporation  
 530 "B" Street, Suite 2400  
 San Diego, California 92101  
 Telephone: (619) 232-1700

Attorneys for Debtor  
**SARA NEWSOME BURNS**

FILED  
 99 MAR 15 AM 10:10  
 CLERK  
 U.S. BANKRUPTCY CT.  
 SO. DIST. OF CALIF.

**UNITED STATES BANKRUPTCY COURT**  
**SOUTHERN DISTRICT OF CALIFORNIA**

In re:	)	CASE NO. <sup>99</sup> 98-00811-B13
SARA NEWSOME BURNS, an individual,	)	DEBTOR'S RESPONSE TO TRUSTEE'S
	)	OBJECTION TO CONFIRMATION OF
Debtor.	)	CHAPTER 13 PLAN
	)	
	)	Date: March 17, 1999
	)	Time: 10:00 a.m.
	)	Dept.: Three
	)	Judge: Hon. John J. Hargrove

SARA NEWSOME BURNS, an individual and the Chapter 13 debtor in these proceedings ("Debtor"), respectfully submits the following response to the objection to confirmation of Chapter 13 plan dated March 5, 1999, brought by the Chapter 13 trustee herein (the "Trustee").

**I.**

**INTRODUCTION**

This case involves a debtor who is on permanent disability after ten (10) hip replacement surgeries. She has moderate sources of income, including disability payments, and she has received a

ORIGINAL

ROBBINS & KEEHN, APC  
 ATTORNEYS AT LAW  
 2400 UNION BANK BUILDING - 530 "B" STREET  
 SAN DIEGO, CALIFORNIA 92101  
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1 "whistle blower" award from the federal government for her integral  
 2 role in uncovering a massive medicare fraud scheme (that award is  
 3 currently in the client trust account of the Debtor's counsel  
 4 pursuant to this Court's order entered February 22, 1999, a copy of  
 5 which is attached hereto marked "Exhibit A" and incorporated herein  
 6 by this reference). On March 5, 1999, the Debtor proposed a Chapter  
 7 13 plan which will pay one hundred percent (100%) of all her allowed  
 8 unsecured claims.

9 The Trustee objected to the plan by marking the section of the  
 10 standard "Trustee's Objections To Confirmation of Chapter 13 Plan"  
 11 which states "[t]he Plan is not proposed in good faith or does not  
 12 comply with Code provisions" (the "Objection").<sup>1</sup> However, the  
 13 Trustee has provided no evidence, legal authority, or explanation in  
 14 support of this Objection.

15 The Objection has no basis in law or fact and, as shown below,  
 16 the Debtor filed her Chapter 13 plan in good faith. Therefore, the  
 17 Debtor's plan, as proposed, should be confirmed.

## 18 II.

### 19 DISCUSSION

20 The Ninth Circuit Bankruptcy Appellate Panel has held that the  
 21 following facts should be considered in determining whether a  
 22 chapter 13 plan is proposed in good faith:

- 23 1. The amount of the proposed payments and the amounts of the  
 24 debtor's surplus;
- 25 2. The debtor's employment history, ability to earn, and  
 26 likelihood of future increases in income;

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27 <sup>1</sup> A copy of the Trustee's Objection dated February 4, 1999, is attached hereto marked "Exhibit B" and  
 28 incorporated herein by this reference.

3. The probable or expected duration of the plan;
4. The accuracy of the plan's statements of the debts, expenses and percentage of repayment of unsecured debt, and whether any inaccuracies are an attempt to mislead the court;
5. The extent of preferential treatment between classes of creditors;
6. The extent to which secured claims are modified;
7. The type of debt sought to be discharged, and whether any such debt is nondischargable in Chapter 7;
8. The existence of special circumstances such as inordinate medical expenses;
9. The frequency with which the debtor has sought relief under the Bankruptcy Reform Act;
10. The motivation and sincerity of the debtor in seeking Chapter 13 relief; and
11. The burden which the plan's administration would place upon the trustee.

In re Warren, 89 B.R. 87, 93 (9th Cir. BAP 1988).

In this case, the Debtor has proposed a plan which will pay one hundred percent (100%) of all allowed unsecured claims.

The Debtor is presently on permanent disability and because of ten (10) hip replacement surgeries, she has a small likelihood of future increases in income.

The plan is a three (3) year plan.

There are no apparent inaccuracies in any of the Debtor's schedules or statements.

The plan does not provide for any preferential treatment between classes of creditors.

No secured claims are modified by the Debtor's plan.

The Debtor intends to pay all allowed unsecured claims through her Chapter 13 plan.

1 A special circumstance existing in this case is the Debtor's  
2 status as permanently disabled.

3 The Debtor has never previously sought bankruptcy relief.

4 The Debtor seeks nothing more than to put the mechanisms of  
5 Chapter 13 to the very use that Congress had in mind when it  
6 originally created this rehabilitation Chapter.

7 There does not appear to be any unusual burden placed on the  
8 Trustee for the plan's administration.

9 **III.**

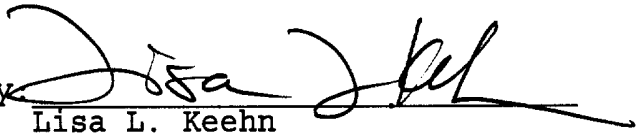
10 **CONCLUSION**

11 The Debtor has proposed her Chapter 13 plan in good faith. The  
12 Trustee has shown no evidence in this case to the contrary. The  
13 Debtor has met her burden of proof on the issue of good faith.  
14 Therefore, the Debtor's proposed Chapter 13 plan should be confirmed  
15 and the Objection overruled.

16 Dated: March 15, 1999

17 **ROBBINS & KEEHN**  
A Professional Corporation

18  
19  
20 By

  
Lisa L. Keehn  
Attorneys for Debtor  
SARA NEWSOME BURNS

CSD 1190 (07/01/96)

Name, Address, Telephone No. &amp; I.D.

Bryan D. Sampson, Esq. (43143)

SAMPSON &amp; ASSOCIATES

2139 First Avenue

San Diego, CA. 92101

Phone: (619) 557-9420

Fax: (619) 557-9425

## UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

a Re Sara Newsome Burns

BANKRUPTCY NO. 99-00811-B13

Debtor.

## NOTICE OF ENTRY

## O THE PARTIES IN INTEREST NAMED BELOW:

You are hereby notified that on FEB 22 1999, this Court entered in the docket for the above-titled case the following Judgment [or Order], to wit:

Order Authorizing Payment

I hereby certify that a copy of this notice was mailed to the parties of interest on this date: [check as appropriate]

- X] UNITED STATES TRUSTEE, Department of Justice, 402 West Broadway, Suite 600, San Diego, CA 92101  
 X] THOMAS H. BILLINGSLEA, JR., TRUSTEE, 530 "B" Street, Suite 1500, San Diego, CA 92101  
 (For Chapter 13 cases numbered 90-08445 or lower and ODD numbers beginning with 92-01217)  
 ] DAVID L. SKELTON, TRUSTEE, 620 "C" Street, Suite 413, San Diego, CA 92101-5312  
 (For Chapter 13 cases numbered 90-08446 to 92-01215 and EVEN numbers beginning with 92-01216)  
 ] Chapter 7 Trustee:

I in addition: [Continue on reverse, if necessary]

Charles F. Robbins, Esq.  
 Rpbbsins & Keehn  
 530 "B" Street, Suite 2400  
 San Diego, CA. 92101

Stephen Segreto  
 Assistant U.S. Attorney  
 Southern District of California  
 880 Front St., Rm. 6293  
 San Diego, CA. 92101

TED: FEB 22 1999

Barry K. Lander, Clerk

By: Anna D. Robinson, Deputy Clerk

EXHIBIT A

**SAMPSON & ASSOCIATES**

Bryan D. Sampson (#143143)  
2139 First Avenue  
San Diego, CA 92101  
(619) 557-9420/Fax (619) 557-9425

Attorneys for Creditor BRADLEY PROULX

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

SARA NEWSOME BURNS,

Debtor.

CASE NO. 99-00811-B13

**ORDER AUTHORIZING  
PAYMENT**

Date: 2/9/99  
Time: 11:00 a.m.  
Ctm: 3  
Hon. John J. Hargrove

Creditor Bradley Proulx's application for an order authorizing payment of settlement monies to a segregated account on monies owed to Debtor BURNS from the United States of America to the Chapter 13 Trustee came before the Court on the above date and time by Creditor's ex parte application. Creditor BRADLEY PROULX appeared through his counsel, Bryan D. Sampson. The United States of America appeared through its counsel, Stephen Segreto. Sara Newsome Burns did not appear. Upon reviewing the pleadings filed by the parties, hearing oral argument, and good cause appearing therefore,

IT IS HEREBY ORDERED that the UNITED STATES OF AMERICA shall immediately pay any and all monies currently due and owing to Debtor SARA NEWSOME BURNS directly to Debtor's counsel, Robbins & Keehn, at 530 "B" Street, Suite 2400, San Diego, California 92101, c/o of Charles F. Robbins, Esq.

**EXHIBIT A**

1 IT IS FURTHER HEREBY ORDERED that the UNITED STATES OF  
2 AMERICA is then deemed to have discharged all of its obligations under the  
3 subject settlement and is, therefore, released from any further liability against all  
4 parties in this action, including but not limited to Debtor SARA NEWSOME  
5 BURNS, Creditor Bradley Proulx, and their counsel.

6 IT IS FURTHER HEREBY ORDERED that Debtor's counsel, Charles F.  
7 Robbins, Esq., and his firm, Robbins & Keehn, are hereby instructed to place the  
8 funds from the United States of America into a segregated, interest-bearing  
9 account. The funds may not be disbursed without further order of this court.  
10 Further, in the event the Debtor dismisses her Chapter 13 action, the funds shall  
11 remain in the account of Debtor's counsel, pending further order of this court.

12 IT IS SO ORDERED.

13 DATED: \_\_\_\_\_

14 Judge, United States Bankruptcy Court

15  
16 NOTICE: Signature by the attorney constitutes a certification under Federal  
17 Rule of Bankruptcy Procedure 9011 that the relief provided by the  
18 Order is the relief granted by the Court.

19 Submitted by:

20   
21 Bryan D. Sampson

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25  
26  
27 In re: Sara Newsome Burns  
Case No.: 99-00811-B13  
28 Order Authorizing Payment

**EXHIBIT A**

**SAMPSON & ASSOCIATES**

Bryan D. Sampson (#143143)  
2139 First Avenue  
San Diego, CA 92101  
(619) 557-9420/Fax (619) 557-9425

Attorneys for Creditor BRADLEY PROULX

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

SARA NEWSOME BURNS,

Debtor.

CASE NO. 99-00811-B13

**NOTICE OF LODGMENT OF  
ORDER**

Date: 2/9/99  
Time: 11:00 A.M.  
Ctm: 3  
Hon. John J. Hargrove

NOTICE IS HEREBY GIVEN that Plaintiff BRADLEY PROULX hereby lodges with the court the following Order Authorizing Payment, as Exhibit "A." Please take further notice that any objections to the form and content of the proposed Order must be filed and served within five (5) business days from the date of service of this notice.

**EXHIBIT**

**DESCRIPTION**

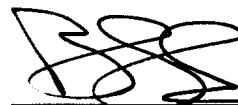
"A"

Order Authorizing Payment

DATED: February 10, 1999

**SAMPSON & ASSOCIATES**

By:



Bryan D. Sampson  
Attorneys for Creditor BRADLEY PROULX

**EXHIBIT A**



**SAMPSON & ASSOCIATES**

Bryan D. Sampson (#143143)

2139 First Avenue

San Diego, CA 92101

(619) 557-9420/Fax (619) 557-9425

Attorneys for Creditor BRADLEY PROULX

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

In re:

SARA NEWSOME BURNS,

Debtor.

CASE NO. 99-00811-B13

**ORDER AUTHORIZING  
PAYMENT**

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Time: 11:00 a.m.  
Ctm: 3  
Hon. John J. Hargrove

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IT IS HEREBY ORDERED that the UNITED STATES OF AMERICA shall immediately pay any and all monies currently due and owing to Debtor SARA NEWSOME BURNS directly to Debtor's counsel, Robbins & Keehn, at 530 "B" Street, Suite 2400, San Diego, California 92101, c/o of Charles F. Robbins, Esq.

**EXHIBIT A**

EXHIBIT "A"

1 IT IS FURTHER HEREBY ORDERED that the UNITED STATES OF  
2 AMERICA is then deemed to have discharged all of its obligations under the  
3 subject settlement and is, therefore, released from any further liability against all  
4 parties in this action, including but not limited to Debtor SARA NEWSOME  
5 BURNS, Creditor Bradley Proulx, and their counsel.

6 IT IS FURTHER HEREBY ORDERED that Debtor's counsel, Charles F.  
7 Robbins, Esq., and his firm, Robbins & Keehn, are hereby instructed to place the  
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9 account. The funds may not be disbursed without further order of this court.  
10 Further, in the event the Debtor dismisses her Chapter 13 action, the funds shall  
11 remain in the account of Debtor's counsel, pending further order of this court.

12 IT IS SO ORDERED.

13 DATED: \_\_\_\_\_

Judge, United States Bankruptcy Court

16 NOTICE: Signature by the attorney constitutes a certification under Federal  
17 Rule of Bankruptcy Procedure 9011 that the relief provided by the  
Order is the relief granted by the Court.

18 Submitted by:

19   
Bryan D. Sampson

20  
21  
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23  
24  
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26  
27 In re: Sara Newsome Burns  
Case No.: 99-00811-B13  
28 Order Authorizing Payment

EXHIBIT A

<b>UNITED STATES BANKRUPTCY COURT,</b> <b>SOUTHERN DISTRICT OF CALIFORNIA</b> 325 W. "F" Street, San Diego, CA 92101-8970		<b>COURT USE ONLY</b>
<b>TITLE OF CASE (Abbreviated)</b> In re Burns		
<b>ATTORNEY(S) NAME AND ADDRESS      TELEPHONE NO.</b> Bryan D. Sampson, Esq. (#143143) (619) 557-9420 SAMPSON & ASSOCIATES 2139 First Avenue San Diego, California 92101 fax: 619/557-9425		
<b>ATTORNEY(S) FOR:</b> Creditor SARA NEWSOME BURNS	<b>HEARING DATE-TIME-DEPT</b> 2/9/99 11:00 a.m. 3	<b>CASE NO.</b> 99-00811-B13

### DECLARATION OF SERVICE

I, Jody Racanelli, declare that: I am a citizen of the United States and am employed in the County of San Diego, State of California; I am over the age of 18 years and not a party to this action; my business address is 2139 First Avenue, San Diego, CA., 92101;

On February 10, 1999, I served the following document(s):

1. **Notice of Entry;**
2. **Order Authorizing Payment;**
3. **Notice of Lodgement of Order.**

addressed to:

Charles F. Robbins, Esq.  
 Robbins & Keehn  
 530 "B" Street, Suite 2400  
 San Diego, CA. 92101

U.S. Trustee's Office  
 402 West Broadway, Suite 600  
 San Diego, CA. 92101


Stephen Segreto  
 Assistant U.S. Attorney  
 Southern District of California  
 880 Front St., Rm 6293  
 San Diego, CA. 92101

Thomas H. Billingslea, Jr.  
 Chapter 13 Trustee  
 530 "B" Street, Suite 1500  
 San Diego, CA. 92101

in the following manner of service (check proper box):

- ☒ (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at San Diego, California.
- ☐ (VIA TELECOPIER) I also caused such document to be telecopied to the offices of the addressees where indicated.
- ☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 10, 1999, at San Diego, California.

  
 Jody Racanelli

**EXHIBIT**

Thomas H. Billingslea, Jr.  
 530 "B" Street, Suite 1500  
 San Diego, CA 92101  
 (619) 233-7525

U.S. Bankruptcy Court,  
 Southern District of California  
 325 West F Street, San Diego, CA 92189

In Re:

SARA NEWSOME BURNS

FILED

99 FEB 15 PM 7:17

CLERK  
 U.S. BANKRUPTCY CT.  
 SO. DIST. OF CALIF.

Bankruptcy No.:

99-00811-B-13

### Trustee's Objections To Confirmation of Chapter 13 Plan

Thomas H. Billingslea, Jr., the Standing Chapter 13 Trustee, hereby objects to confirmation and moves to dismiss. The basis for the objection is:

1. **Plan Length:** The Plan length is over 60 months. [1322 (d)]
2. **Jurisdictional Limitations:** Debtors owe debts in excess of \$269,250 in unsecured debts and/or \$807,750 in secured debts. [109 (e)]
3. **Disposable Income**
  - Debtor has failed to apply all projected disposable income to plan for a period of not less than three years. [1325 (b) (1) (B)]
  - Debtor's Expenses are high, namely:
    - Transportation
    - 401K Deduction
    - Recreation
    - Other
  - Income listed on Schedule I differs from Paycheck stub.
4. **Unfair Discrimination:** The plan discriminates among the unsecured creditors. [1322 (b) (1)]
  - Automobile
  - Student Loan
5. **Arrears:** The plan does not provide for the timely curing of mortgage arrears.
6. **The plan is incomprehensible or internally inconsistent and the Trustee cannot administer it in current format.**
  - Need to file Mandated Plan
7. **Plan Payments**
  - Inability to make timely plan payments. [1325 (a) (6)]
- ☒ 8. **The Plan is not proposed in good faith or does not comply with Code provisions.**
  - Tax Returns have not been filed for years: \_\_\_\_\_
  - Inadequate Post-Petition Tax Provision
  - Failure to disclose prior bankruptcy
  - Failure to timely respond to requests of Trustee
  - Failure to provide for full payment of all priority claims.
9. **Liquidation Analysis:** Allowed unsecured creditors receive less under a Chapter 13 than they would have under a Chapter 7. [1325 (a) (4)]

I hereby certify under penalty of perjury that I have on this date mailed a true copy of this Objection to Plan to the Attorney for the debtor (or debtors).

Dated: 2/4/99

Attorney for Debtor[s]:

Thomas H. Billingslea, Jr. Trustee

L. SCOTT KEEHN

EXHIBIT B